

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DAVID DEITZEL

Plaintiff,

v.

SPRINGFIELD TERMINAL RAILWAY  
COMPANY

Defendant.

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CIVIL ACTION

NO. 03-12560-RGS

**PLAINTIFF'S MOTION TO REOPEN DISCOVERY FOR THE DESIGNATION  
OF EXPERTS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(2)(b)**

NOW COMES the plaintiff, David Deitzel, in the above-entitled matter and respectfully request this Honorable Court reopen discovery for the following reasons:

1. Plaintiff, David Deitzel ("Plaintiff"), filed this action against his employer, Defendant, Springfield Terminal Railway ("Defendant"), under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51 et seq. for injuries sustained in a work-related incident on March 12, 2001.
2. The discovery deadline in this case was October 10, 2005.
3. Defendant filed a Motion for Summary Judgment on November 16, 2005, which was denied by this court on February 15, 2006.
4. On February 21, 2006, defendant filed a Motion for Leave of Court to identify a medical expert late because of medical information received from plaintiff on or about January 30, 2006. Said motion was granted by the court on February 21, 2006.
5. On February 24, 2006, this court issued an Order setting the pre-trial conference for June 22, 2006 and scheduling a jury trial for June 26, 2006.
6. On June 13, 2006, this court issued an Order rescheduling the jury trial for October

2, 2006, and requiring all trial documents be filed by September 26, 2006.

7. On June 20, 2006, plaintiff was terminated by defendant after defendant found plaintiff guilty at a disciplinary hearing on the following charge: "Failure to properly perform your duties while employed as a conductor for the Springfield Terminal Railway, when you marked off an excessive amount of days since January 20, 2006. They are as follows: January 20, 2006, January 21, 2006, January 22, 2006, January 23, 2006, January 25, 2006, February 9, 2006, February 14, 2006, February 22, 2006, February 23, 2006, March 23, 2006, March 31, 2006, April 25, 2006, April 26, 2006, May 4, 2006 and May 18, 2006".

8. Plaintiff's treating physician, Dr. Robert A. Babineau, Jr., opined that the plaintiff suffered from severe acute and chronic neck pain with radiculopathy, status post cervical surgery March 30, 2005; that due to this condition, he instructed plaintiff to be off of work with flare-ups; and that he vouched for the aforementioned out of work days. See letter from Robert A. Babineau, Jr., M.D. dated July 11, 2006 attached as Exhibit "A".

9. Plaintiff's expert medical witness, Dr. Michael G. Kennedy, has opined that plaintiff's symptoms, including the surgery of March 30, 2005, was causally related to the incident which occurred in March, 2001. See report of Michael G. Kennedy, M.D. dated May 30, 2006 attached as Exhibit "B".

10. Plaintiff alleges that defendant terminated his employment because of his absences related to injuries sustained in the work related accident on March 12, 2001.

11. Given the foregoing circumstances, plaintiff would like to submit the evidence in this case to a vocational rehabilitation specialist to determine whether plaintiff is permanently or occupationally disabled, and if so, to a actuarial-economic expert to determine whether plaintiff has sustained a loss of future earning capacity and other economic damages.

12. Based on the foregoing, plaintiff respectfully requests that discovery be reopened to designate a vocational and actuarial-economic expert pursuant to F.R.C.P. 26(a)(2)(b) under the following proposed discovery plan:

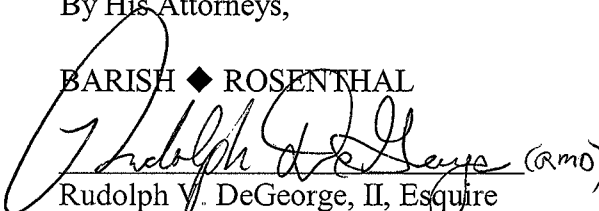
1. All additional discovery shall be completed by October 15, 2006.
2. All additional experts for the plaintiff shall be designated no later than November 15, 2006.
3. All additional experts for defendant shall be designated no later than January 15, 2007.
4. Rule 36 Requests to be completed by February 5, 2007.
5. All expert depositions shall be completed by February 14, 2007.
6. A Final Pretrial Conference shall be held on or before March 7, 2007 or other date to be set at the convenience of the Court.

Respectfully submitted,

DAVID DEITZEL,

By His Attorneys,

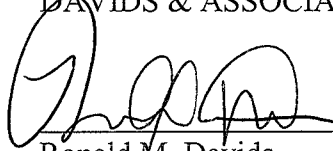
BARISH ♦ ROSENTHAL

 (RMO)  
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DAVID DEITZEL,

By His Attorneys,

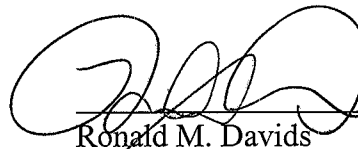
DAVIDS & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'R. Davids', written over a horizontal line.

Ronald M. Davids  
40 Washington Street – Suite 20  
Wellesley, MA 02481  
(781) 416-5055  
BBO No.: 115110

**CERTIFICATE OF SERVICE**

I, Ronald M. Davids, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those identified as non-registered participants on August 25, 2006.

A handwritten signature in black ink, appearing to read 'R. Davids', written over a horizontal line.

Ronald M. Davids